IN THE

Supreme Court of the United States

October Term, 1965

NUMBER 506

J. P. SHELTON,

Petitioner

VS

THE STATE OF GEORGIA,

Respondent

PETITIONER'S REPLY TO BRIEF OF RESPONDENT

1.

Counsel for respondent erroneously indicates at page 2 of his brief that petitioner relies only upon the allegations contained in the written motion to suppress with respect to "manner of raising question in trial court." While the written motion was no doubt adequate to raise the question, it should be noted that petitioner also objected, orally, "to the introduction of seized evidence at the time it was offered" (page 16 of printed petition, paragraph 4). The record further indicates that the petitioner objected *not only* to the admission in evidence

of the papers seized from the trunk of the automobile, but also to the *testimony* of Captain Brown relating to his search of the automobile, and *his inspection* of the identification numbers thereon, which search and inspection of numbers caused him to conclude that the automobile was a stolen car.

2.

Counsel for respondent erroneously states at pages 2 and 3 of his brief that the automobile "had been abandoned for many weeks on a private parking lot, until it was finally impounded and the investigation instituted by the police." Actually, the record on file in this court shows without dispute the following facts:

The search of the vehicle occurred September 6, 1963, about 4 p.m. at Millirons Garage in East Point, Georgia. Petitioner had entered into an agreement on September 2, 1963, to purchase the automobile from Stanley Mack. Petitioner had keys and a bill of sale to the automobile. On September 4, 1963, petitioner parked the automobile on the parking lot of Hycourt Apartments in East Point. On September 5, 1963, Mrs. Proctor, manager of the apartments, had the automobile impounded by Millirons Garage because it did not belong to any of her tenants and she had been unable to contact the registered owner, Stanley Mack. That same day, both Mrs. Proctor and employees of Millirons Garage notified the East Point Police of the impounding of the automobile. On September 6, 1963, petitioner both personally and by representatives contacted Millirons Garage and the East Point Police in an effort to reclaim the automobile, but his efforts were unsuccessful, because the East Point Police

had instructed the Garage not to release the automobile without written authorization from the Police Department. Captain Brown of the East Point Police Department commenced an investigation of the automobile about 4 p.m. on September 6, 1963, by phoning the tag number in to the State Motor Vehicle Bureau and ascertaining that it was registered to Stanley Mack of Decatur, Georgia. Captain Brown was unable to locate Mr. Mack. Neither the tag number on the automobile, nor the vehicle identification number on Stanley Mack's registration, indicated that the automobile had been stolen. Captain Brown then, without first obtaining a warrant, and without knowing that the automobile had been stolen, gained entrance to the automobile by force, and inspected a number plate on the doorpost, which number corresponded to the number under which Stanley Mack had licensed it. However Captain Brown, because of his "suspicions", testified that he "kept digging" and found a "confidential" number on the frame of the vehicle, under the hood; that he phoned this "confidential" number in to the Atlanta Police, and was informed that an automobile bearing that number had been reported stolen. Captain Brown then, with other officers assisting him, removed the doorpost number plate from the automobile (State Exh. 9, this being the identification number plate referred to in Count 3 of the indictment as having been "falsified"); he then obtained a master key to the trunk and took therefrom various objects which were admitted into evidence at the trial over petitioner's objection.

Without Captain Brown's *testimony* relating to his search of the vehicle, inspection and removal of a number plate from the doorpost, and his finding of the con-

fidential number on the frame of the vehicle, the state's case would have failed.

3.

Counsel for respondent erroneously states at page 3 of his brief that petitioner "never asserted any claim of ownership or possessory interest in said car." Actually, petitioner alleged in the written motion to suppress, filed before the trial, that he had been authorized by Stanley Mack "to take possession of said automobile." Then, testimony and petitioner's unsworn statement, adduced at the trial, showed, as noted above, that petitioner was buying the automobile from Stanley Mack, that petitioner personally had parked the automobile at Hycourt Apartments less than 48 hours before the illegal search occurred, and that he attempted unsuccessfully to reclaim the automobile September 6, 1963, just before the search and seizure occurred.

4.

Counsel for respondent has confined his entire argument to the papers which were seized from the trunk of the automobile, and fails to recognize that the motion to suppress evidence, as well as complementary motions made during the course of the trial, complained also of the search itself, *testimony* of Captain Brown relating to the search of the vehicle, and the *number plate* which Captain Brown removed from the doorpost of the automobile, which number plate was introduced in evidence over petitioner's objection, as State's Exhibit 9, in support of the allegations contained in Count 3 of the indictment, viz. that petitioner was in *possession* of the ve-

hicle, knowing that an identification number of said vehicle had been falsified.

Respectfully submitted,

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